IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LARRY BARNETT, et al.	:	CIVIL ACTION
v.	:	
THE TOPPS COMPANY, INC., et al.	:	NO. 98-0462

MEMORANDUM ORDER

AND, NOW, TO WIT, this 9th day of July, 1998, presently before the court is defendant Topps Company, Inc.'s ("Topps") motion for a more definite statement and Plaintiffs' response thereto. For the following reasons, the motion will be denied.

The court may grant a motion for a more definite statement "if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e). The motion is appropriate when the pleading is "so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith, without prejudice to [itself]." Hicks v. Arthur, 843 F. Supp. 949, 959 (E.D. Pa. 1994).

Plaintiffs are thirteen Major League Baseball umpires who assert claims for federal and state law unfair competition, unjust enrichment and infringement of the right of publicity against four defendant trading card companies.[1] The Plaintiffs allege that the defendants used "actual photographs of the Plaintiffs on baseball trading cards without compensating the Plaintiffs." (Am. Compl. at ¶ 1.) Plaintiffs also make this

1. The original complaint named five defendants.

same allegation regarding "other baseball related merchandise." (Am. Compl. at ¶ 21-22.) Plaintiffs include four separate counts in their Amended Complaint outlining the legal theories under which they assert a claim for relief.

Topps contends that Plaintiffs' claims are so vague and ambiguous that it cannot reasonably frame a responsive pleading or motion. Specifically, Topps argues that it cannot decipher which Plaintiffs are asserting claims against it. Additionally, Topps argues that it cannot determine whether all the claims listed in the Amended Complaint are being asserted against it. The court finds that Plaintiffs' Amended Complaint provides Topps with adequate information to allow it to respond by pleading or motion. It is clear from the Amended Complaint that each Plaintiff is alleging four claims against each named defendant. The court acknowledges the possibility that there may be some differences in the number of instances that each Plaintiff is claiming that their likeness and/or photograph was used without their consent. For example, one defendant may have produced fifteen trading cards with the photograph of a particular plaintiff while another manufacturer only produced five trading cards containing that plaintiff's photograph. Topps asserts that it is entitled to this information. The court agrees. However, this type of information will be cultivated during the discovery process. See Seville Indus. Mach. Corp. v. Southmost Mach. Corp., 742 F.2d 786, 790 (3d Cir. 1984)("Under the modern federal rules, it is enough that a complaint put the defendant on notice

of the claims against him. It is the function of discovery to fill in the details, and of trial to establish fully each element of the cause of action."). As stated above, the legal theories under which Plaintiffs seek relief against Topps and its co-defendants are adequately identified in the complaint. The court will not require a more definite statement.

Topps also states that Plaintiffs' allegations concerning "other baseball related merchandise" is vague and ambiguous. Topps argues that the "other baseball related merchandise" is not clearly identified in the Amended Complaint. The court finds that this information can be more appropriately obtained through the discovery process rather than at the pleading stage. Rules 30, 31, 33, 34 and 36 of the Federal Rules of Civil Procedure provide the parties with adequate avenues to narrow the scope of this litigation. The court will not require a more definite statement relating to the specific types of merchandise, other than trading cards, that are the subject of Plaintiffs' allegations in this litigation.

Accordingly, IT IS ORDERED that Topps' motion for a more definite statement is DENIED.

LOUIS C. BECHTLE, J.